IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7534 of 2002

For Approval and Signature:

HON'BLE MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SHAKUNTALABEN N BACHWANI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 7534 of 2002

MR BG PATANI for Petitioner No. 1

MR PRADIP BHATE A.G.P. for Respondent No. 1-4

CORAM : HON'BLE MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 26/04/2004

ORAL JUDGEMENT

The petitioner who has been compulsory retired by the respondents has approached this Court praying that the impugned order be set-aside because it has been by

way of punishment and no necessary procedure has been followed by the department and secondly she has stated that though on the date on which the order was passed she had not attained the age of 55 years as her real date of birth as per the date mentioned in her School leaving Certificate is 12th March, 1947. The petitioner has annexed the said certificate to the petition.

1.1. On perusal of the record, it appears that the respondents had passed order dated 24th April, 2002 purporting to be order under provisions of Rule 161 sub-rule (1) of the Bombay Civil Services Rules, 1959 [B.C.S.R.] wherein it has been mentioned that as the birth date of the petitioner is 4th October, 1946, she has completed the age of 55 years on 3rd August, 2001 and, therefore, in the public interest she is being compulsorily retired from the Government service with effect from 30th April, 2002. It is further stated that in lieu of three months notice she would be paid salary for three months. Alongwith the said order, cheque for the sum of Rs.11,964/- was annexed.

1.3. It also appears from the record that at that time, when the impugned order came to be passed, the petitioner was facing departmental inquiry and was placed under suspension by order dated 11th April, 2000. The said order shows that she was placed under suspension on account of criminal complaint having been registered against her as C.R. No. 132 of 2000 for the alleged commission of offence made punishable under Sections 341, 448, 506, 452, 454,380, 427 read with 114 of the Indian Penal Code. It has been also mentioned that being a Police Constable such type of misconduct was of very serious nature, which required her placement under suspension. The said order was sought to be served on the petitioner by a forwarding letter dated 8th May, 2000. The said order shows that the petitioner had not accepted the same and the order of suspension was therefore affixed at the main entrance of her house at Gandhidham.

1.4. The record of the petition shows that on earlier occasion also because of the complaint having been filed against her under the provisions of Sections 506 (2) read with Section 114 of the Indian Penal Code, and Section 3 and 7 of the Protection of Civil Rights Act, she was initially suspended vide order dated 1st July, 1988 with effect from 21st June, 1989. She was thereafter chargesheeted on 3rd May, 1991. Ultimately, she was compulsory retired from the service by order dated 9th February, 1992. After exhausting all the remedies by way

of filing appeal and revision application as provided under Police Manual, she ultimately preferred Special Civil Application No. 2092 of 1995. This Court [Coram : K.R. Vyas, J.] vide judgment dated 2nd May, 1998, allowed the petition and quashed and set aside the order of compulsory retirement. This Court directed the respondents to reinstate the petitioner on her original post with continuity of service and to pay to her full backwages and all other consequential monetary benefits. The said judgment was later on challenged by the respondents before the Division Bench of this Court in Letter Patent Appeal No. 785 of 1998. The Division Bench dismissed the appeal of the respondents. It may be noted here that the learned Single Judge of this Court while allowing the petition had directed the respondents to impose lesser punishment. The said order was also confirmed by the Division Bench.

1.5. When the petitioner was able to overcome this difficulty, she was again faced with Criminal complaint which was filed by the tenants of the building in which she resides. The said Criminal case became the subject matter of the departmental proceedings initiated against the petitioner. As stated above, she was placed under suspension, pending inquiry. While under suspension, the order of compulsory retirement was passed against her. It appears from the record of the petition that criminal complaint ultimately was withdrawn and the petitioner was acquitted of all the offences which were alleged against her.

2. In view of the aforesaid factual background, there is no manner of doubt that the respondents wanted to get rid of the petitioner anyhow. It may also be noted here, that the petitioner had tried to bring to the notice of the respondents that the birth date mentioned in her service record was not correct and her real date of birth was not 4th October, 1946, but it was 12th March, 1947. In support of her say, she had also produced School Leaving Certificate which clearly shows her date of birth as 12th March, 1947. However, the said certificate has not been taken into consideration by the respondents.

2.1. In the petition the petitioner has categorically made out a case that she has been victimized and she has been compulsory retired by way of penal measure. It was an order of compulsory retirement in accordance with Rule 161 (1) of the B.C.S.R. She has also made a clear averment in the petition that her correct date of birth is 12th March, 1947. These averments have not been

controverted by the respondents by filing any affidavit-in-reply. The averments have remained unchallenged and the entire issue is examined in detail on the strength of the material that was placed alongwith this petition only. It clearly appears that the impugned order of compulsory retirement is punitive in nature and no requisite procedure to terminate the service seems to have been followed by the respondents. If that be so, the order of compulsory retirement deserves to be quashed and set aside and it is hereby ordered to be quashed and set aside. The petitioner, if she has not reached the age of superannuation by now, be reinstated on her original post together with payment of backwages and all the incidental benefits. If she had been superannuated, arrears of salary and her retiral benefits based on last drawn salary be calculated and be paid to her.

With this direction, this petition is allowed. Rule is made absolute with no order as to costs.

[AKSHAY H. MEHTA, J.]

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